

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**PATRICK NATHAN GRIFFIN**

**PLAINTIFF,**

**VS.**

**INTERLAND INC., AN ILLINOIS  
CORPORATION, INTERLAND,  
INC., A GEORGIA CORPORATION,  
JOEL E. VON KAENEL AND  
EDDIE B. SMITH**

**DEFENDANTS.**

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**CIVIL ACTION NO. \_\_\_\_\_**

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**NOTICE OF REMOVAL**

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**TO THE HONORABLE JUDGE OF SAID COURT:**

Defendant Interland Inc., an Illinois Corporation (“Defendant Interland”) and Defendant Eddie B. Smith (“Defendant Smith”) (collectively “Defendants”), hereby give notice and remove this case from the 188<sup>th</sup> Judicial District Court of Gregg County, Texas, to the United States District Court for the Eastern District of Texas, Tyler Division, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. In support of this Notice and in compliance with the requirements for removal, Defendants would show the following:

## **I. FACTUAL BACKGROUND**

### **A. Procedural Background**

1. Defendants have been sued in the matter styled *Patrick Nathan Griffin vs. Interland Inc., an Illinois Corporation, Interland, Inc., a Georgia Corporation, Joel E. Von Kaenel, and Eddie B. Smith*, pending in the 188<sup>th</sup> Judicial District Court of Gregg County, Texas, and bearing Cause No. 2021-1525-A. Plaintiff filed suit on August 27, 2021. See Ex. B, copy of Plaintiff's Original Petition.

2. Defendant Interland is a foreign corporation registered in the State of Illinois. Defendant Interland is not registered to do business in the State of Texas. Defendant Interland received Plaintiff's Original Petition and the state court Citation on October 16, 2021, via personal service. See, Ex. C and D, a true and correct copy of the Citation and Return of Service. Defendant Interland has not yet made an appearance in the state court action. See, Ex. A, Register of Actions for Case 2021-1525-A. Plaintiff granted Defendant Interland a ten-day extension of time to respond to the Original Petition, i.e., November 18, 2021. See, Ex. J.

3. Defendant Smith is a resident of the State of Mississippi. The Clerk of the District Court, Gregg County, issued a Citation on August 27, 2021. See, Ex. E, a true and correct copy of the Citation. Pursuant to a Rule 11 Agreement, Defendant Smith was served with Plaintiff's Original Petition on November 16, 2021. See, Ex. K. Defendant Smith has not yet made an appearance in the state court action. See, Ex. A, Register of Actions for Case 2021-1525-A.

4. Defendant Interland, Inc., a Georgia Corporation (hereafter Interland Georgia) received Plaintiff's Original Petition and the state court Citation on August 30, 2021, via personal delivery to its Registered Agent, Corporation Service Company, 211 E. 7<sup>th</sup> Street, Austin, Tennessee, 37073. See, Ex. F and G, a true and correct copy of the Citation and Return of Service. Interland Georgia's answer was due on September 20, 2021. Interland Georgia has not made an appearance in the state court action. See, Ex. A, Register of Actions for Case 2021-1525-A. Interland Georgia has not been properly joined to this lawsuit as it is a non-surviving entity of a merger with Interland, Inc., a Minnesota Corporation, as of November 30, 2001. See, Ex. H, Certificate of Merger issued by the Georgia Secretary of State.

5. Defendant Joel E. Von Kaenel ("Von Kaenel") is a resident of the State of Florida. The Clerk of the District Court, Gregg County, issued a Citation on August 27, 2021. See, Ex. I, a true and correct copy of the citation. Defendant Von Kaenel has not been served and has not yet made an appearance in the state court action. See, Ex. A, Register of Action for Case 2021-1525-A.

6. This Notice is timely filed on November 17, 2021, within 30 days after receipt of notice by Defendant Smith on November 16, 2021, of the pleading setting forth the claims for relief as required by 28 U.S.C. § 1446(b). See, Ex. K. Defendant Interland expressly consents to the removal of this action to Federal Court.

#### **B. Plaintiff's Factual Allegations**

7. Plaintiff is a personal injury claimant seeking damages for alleged injuries sustained in a motor vehicle collision on January 5, 2021, in Gregg County, Texas. See, Ex. B,

Plaintiff's Original Petition, at ¶IV. Defendant Smith was the driver of a tractor trailer that impacted Plaintiff's vehicle. Defendant Smith was employed by Defendant Interland, who owned the tractor and trailer driven by Defendant Smith at the time of the incident.

8. Plaintiff pled, in error, that Interland Georgia employed Defendant Smith and that it owned and/or leased the tractor trailer driven by Defendant Smith. Defendant Interland is the true owner of the tractor trailer at issue. Interland Georgia is an extinct entity as it was merged with another entity, Interland, Inc., a Minnesota Corporation, on November 30, 2001. See, Ex. I, Certificate of Merger issued by the Georgia Secretary of State. Interland Georgia was the non-surviving entity of its merger with Interland, Inc., a Minnesota Corporation. *Id.*

9. Defendant Interland is not and has never been related to Interland Georgia or Interland, Inc., a Minnesota Corporation.

10. Plaintiff has sued Defendants for negligence and gross negligence in causing his injuries in the motor vehicle collision. See Ex. B, Plaintiff's Original Petition, at ¶11; Ex. B at ¶¶V-X.

11. Plaintiff seeks damages exceeding \$1 million. See Ex. B, Plaintiff's Original Petition, at ¶XI. Plaintiff further asserts significant and debilitating injuries resulting from the motor vehicle collision. *Id.*

## **II. Grounds for Removal to the United States District Court for the Eastern District of Texas – Tyler Division**

12. Pursuant to 28 U.S.C. §1446(b)(2)(B), “[e]ach Defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal”. See 28 U.S.C. §1446(b)(2)(B). Here, Defendant

Smith was served with Plaintiff's pleading on November 16, 2021. See, Ex. K. Defendant Smith files this Notice within the 30 days allowed by the statute.

13. This case is removable to this Court because this Court may exercise jurisdiction over the claims asserted against Defendants Interland and Smith because the parties are diverse and the amount in controversy exceeds \$75,000.00 as set forth in 28 U.S.C. §1332, § 1441(a).

14. The incident at issue involving Plaintiff occurred in Gregg County, Texas. See, e.g. Ex. B, Plaintiffs' Original Petition, at ¶IV.

15. As alleged in Plaintiff's Original Petition, Defendant Interland is foreign corporation registered in Illinois. See Ex. B, Plaintiffs' Original Petition, at ¶III. As alleged by Plaintiff, Defendant Smith is a resident of the State of Mississippi. *Id.* As alleged by Plaintiff, Defendant Von Kaenel is a resident of the State of Florida. *Id.*

16. As set forth herein, Interland Georgia was a foreign corporation registered in Georgia. Although once registered to do business in Texas, it is now an extinct entity and has not been properly joined and should, thus, be dismissed. Plaintiff either sued Interland Georgia believing it was associated with Defendant Interland or improperly sued it to defeat diversity. See, Ex. I. Either way, this Court should disregard Interland Georgia in assessing diversity as it was not properly joined. *See* 28 U.S.C. §1446 (b)(2)(A).

17. The amount in controversy exceeds \$75,000.00 as required by 28 U.S.C. §1332. Plaintiff seeks an award exceeding \$1 million. See Ex. B, Plaintiff's Original Petition, at ¶XI. Plaintiff further asserts significant and debilitating injuries. *Id.*

### **III. Consent to Removal and Removal Procedure**

18. Defendant Interland was served with process on October 16, 2021, but has not filed an answer. Defendant Interland expressly consents to removal of this action to Federal Court.

19. Defendant Smith was served with process on November 16, 2021, but has not filed an answer. See, Ex. K. Defendant Smith files this Notice within thirty (30) days of service. *Id.*

20. Interland Georgia was served with the Citation via a third-party but has not answered or otherwise appeared. Interland Georgia is an extinct entity, cannot give consent and has not been properly joined pursuant to 28 U.S.C. §§1332, 1441 and 1446.

21. The state court has issued a Citation for Defendant Von Kaenel, but the Citation has not been served, and Defendant Von Kaenel has not otherwise appeared in the state court action. See Ex. A. The Court shall not consider Defendant Von Kaenel's consent until such time that he is properly joined and served. *See* 28 U.S.C. §1446 (b)(2)(A).

22. Defendants Interland and Smith will file their responsive pleadings and pre-answer motions subject to Fed. R. Civ. P. 12 in compliance with Fed. R. Civ. P. 81(c).

### **IV. Attachments to Notice of Removal**

23. Defendants Interland and Smith hereby attach to this Notice of Removal the following documents, as required and in compliance with this Court's Local Rules and in support of this Notice:

<b>Exhibit Number</b>	<b>Document</b>	<b>Date Filed</b>
Exhibit A	Docket Sheet (Register of Actions)	
Exhibit B	Plaintiff's Original Petition	8-27-21
Exhibit C	Request for Issuance of Service	8-27-21
Exhibit D	Return of Service	10-16-21
Exhibit E	Request for Issuance of Service	8-27-21
Exhibit F	Return of Service	8-30-21
Exhibit G	Request for Issuance of Service	8-30-21
Exhibit H	Request for Issuance of Service	8-30-21
Exhibit I	Certificate of Merger	11-30-01
Exhibit J	Rule 11 Extending Answer Deadline	11-8-21
Exhibit K	Rule 11 for Service of Citation	11-16-21

#### **IV. Conclusion and Prayer**

Defendants Interland Inc., an Illinois Corporation, and Eddie B. Smith hereby remove this action to the United States District Court for the Eastern District of Texas, Tyler Division, on the basis of diversity jurisdiction under 28 U.S.C. §§ 1332, 1441(a), and 1446.

Respectfully submitted,

KERSHAW ANDERSON, PLLC

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**ATTORNEYS FOR DEFENDANTS  
INTERLAND, INC., AN ILLINOIS  
CORPORATION AND EDDIE B. SMITH**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was served upon all counsel of record via e-service on this 17<sup>th</sup> day of November, 2021.

/s/ M. Turner Field  
**M. TURNER FIELD**